**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL ST.NO.11277 OF 2007.**

The State of Maharashtra
(Through Special Land Acquisition
Officer, Metro Centre No.2,
Panvel, Dist. Raigad. ... Appellant.

Versus.

1. Shri Dilip Gopal Naik,
2. Shri Pritam Gopal Naik.
3. Kum.Nisha Gopal Naik.
4. Kum.Chaya Gopal Naik.
5. Kum.Dhanwanti Gopal Naik.
6. Smt.Jijabai Gopal Naik.
7. Shri Bhaskar Pilaji Patil.
8. Sau.Leelabai Gopal Naik.
   All Adults, residents of
   Bamandongri, Taluka Panvel,
   Dist.Raigad.
   Nos.2 to 8 P/A Holder
   Shri Dilip Gopal Naik. ... Respondents.

Shri B.H.Mehta for the Appellant.

Shri Shreekant Gavand for the Respondents.

**CORAM : ABHAY S.OKA, J.**

**DATED : 26th October, 2007.**

**ORAL JUDGMENT.:**

1. Admit. The Advocate for the Respondents waives service. Taken up for hearing forthwith by consent of the Advocates appearing for the parties.

2. The Appeal arises out of an Award made under sub-section (3) of section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act").

The acquisition relates to the land bearing Survey No.32/1, 32/3, 32/5 and 37/0 of village Ulve, Taluka Panvel, District Raigad, admeasuring 3500 sq.meters. The said lands were notified for acquisition by a notification dated 3rd February 1970 issued under section 4 of the said Act. The purpose of acquisition was the development of satellite city of Navi Mumbai. An Award was made under section 11 of the said Act on 6th August 1986. Based on an award of another land which was acquired from the same village on the basis of the same notification dated 3rd February 1970, the Respondents-Claimants applied for redetermination of compensation. Being aggrieved by the decision of the Special Land Acquisition Officer on the said Application, a reference was filed under sub-section (3) of section 28A of the said Act. The Reference Court fixed market value of the acquired land at Rs.12/- per sq.meter. The Reference Court held that the Respondents are entitled to compensation at the rate of Rs.5000/- per tree for 38 mango trees and Rs.3000/- per tree for other fruit bearing trees.

3. The learned A.G.P. appearing for the Appellant submitted that considering the remoteness of the village, the rate of Rs.12/- per sq.meter fixed by the Reference Court is on the higher side. He pointed out that the acquired land is far away from Bombay-Pune

National Highway. He submitted that the valuation of the trees made by the learned trial Court is excessive.

4. The learned Advocate for the Respondents placed reliance on the decision of this Court in the case of Janu Ragho Patil v/s. State of Maharashtra (First Appeal No.83 of 1992 decided on 12th April 2005) and other connected matters. He pointed out that for a similarly situated land from the same village this Court has fixed the market value at Rs.12/- per sq.meter. He pointed out that the compensation awarded on account of trees is fair and reasonable. He has placed on record a letter dated 26th October 2007 addressed to him by the 1st Respondent stating therein that the Respondents do not desire to challenge the Award passed by the Reference Court either preferring an appeal or by filing cross-objection.

5. I have carefully considered the submissions. The Reference Court has referred to the location of the acquired land. After considering the location which is reflected from the evidence of Vikrant Manohar Vaidya, a valuer, the learned trial Judge has accepted the fact that on the date of acquisition, the acquired land had non-agricultural potential and there was overall development in the area surrounding the acquired land. The learned trial Judge came to the conclusion that the

market value of the mango tree deserves to be fixed at Rs.5000/- per tree. He accepted that the market value of other fruit bearing trees at Rs.3000/- per tree.

6. A reference will have to be made to the decision of this Court in the case of Janu Ragho Patil (supra). The said appeal arose out of an award made in a Reference under section 18 of the said Act relating to a land from village Ulwe, Taluka Panvel, District Raigad which was notified for acquisition under the same notification dated 3rd February 1970. The learned Single Judge of this Court relied upon a decision of another learned Single Judge of this Court relating to village Targhar, Taluka Panvel, District Raigad which was notified for acquisition under the same notification dated 3rd February 1970. The village Targhar is the adjoining village. After considering all aspects, the learned Single Judge came to the conclusion that the market value of the acquired land from village Targhar was Rs.15/- per sq.meter. The learned Judge made deduction of Rs.3/- per sq.meter on account of development charges and fixed the market value of the land at village Ulve at the rate of Rs.12/- per sq.meter. Considering the fact that the land subject matter of the present Appeal and the land subject of the decision of this Court in the case of Janu Ragho Patil were notified for acquisition for the same metro project

under the same notification and considering the fact that the lands are from the same village, no fault can be found with the Reference Court fixing the market value at the rate of Rs.12/- per sq.meter.

7. The compensation awarded regarding trees at the rate of Rs.5000/- per tree awarded for mango trees and Rs.3000/- per tree for other fruit bearing trees cannot be said to be excessive. It is very difficult to interfere with the said findings recorded by the Reference Court.

8. Hence there is no merit in the Appeal. The same is dismissed. No order as to costs.

**Judge.**